FILED
NOV 6 1957
JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

YOKNAPATAWPHA DRAINAGE DISTRICT NO. 2, LAFAYETTE COUNTY, MISSISSIPPI, Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent.

No. 486

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

BRIEF FOR PETITIONERS IN OPPOSITION TO THE BRIEF OF THE UNITED STATES.

JAMES STONE & SONS
P. O. Box 269
Oxford, Mississippi
Attorneys for Petitioner.

TODD-MEMPHIS

INDEX

Page

1. Argument 1

2. Conclusion 5

3. Certificate 7

CITATIONS

1. Laws of Mississippi 1912, c. 197, sec. 34..... 3

2. Petition for Certiorari, pp. 15-17..... 6

3. United States v. Aho et al, (D.C.Ore. 1944), 68 F.Supp. 358..... 4

4. United States v. Florea et al, (D.C. Ore. 1945), 68 F.Supp. 365..... 4

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

YOKNAPATAWPHA DRAINAGE DISTRICT NO. 2, LAFAYETTE COUNTY, MISSISSIPPI, Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent.

No. 486

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

BRIEF FOR PETITIONER IN OPPOSITION TO THE BRIEF OF THE UNITED STATES

Petitioner is filing this short Reply Brief for the reason that Counsel for the Government apparently still do not understand the contentions of Petitioner in this case.

On Page 2 of the Brief for the United States it is stated, under the heading of "Question Presented" that the contention of Petitioner is that where the United States condemns private lands located within a drainage district

and pays to the owners the full market value of such lands, the United States must also compensate the Drainage District for its claim for future assessments against the property. This is incorrect. The contentions of Petitioner are set out on pages 13-17, both inclusive, of the Petition filed herein. For convenience of the Court they will now be restated:

1. The Drainage District did place a specific lien on all the land in the Drainage District back in 1917 when the assessment of benefits and damages became final. This was a lien on all the land and this lien has had since 1917 the force and effect of a final judgment according to the law of Mississippi.

2. Petitioner did have an indefeasible estate and interest in all the land in the Drainage District under the decisions of a Federal Court, which decisions have never been overruled.

3. While it is true that the United States did take the land in the Drainage District free from all encumbrances and took the fee simple title to about two-thirds of the land in the Drainage District, still it took such land subject to the lien of the assessed benefits, which taking was analogous to taking land subject to a recorded mortgage. This lien was the property of the Drainage District and not the property of the landowners whose property was taken.

4. Petitioner originally had the power to make an additional assessment of benefits and damages upon all the land in the Drainage District if such should become necessary for the proper repair and maintenance of the drainage canal, and still has such power in such circum-

stances in order to furnish proper drainage for that part of the land in the Drainage District which land has not been taken by the United States.

5. The District Court did not use the correct measure of damages in awarding compensation to Petitioner because the taking by the United States was taking of a part of an integrated drainage system and Petitioner was entitled to prove the reasonable estimated cost necessary for repairing and maintaining the drainage canal in order to furnish drainage for the lands in that part of the Drainage District which have not been taken by the United States. It was error for the District Court to refuse to admit such evidence.

What Counsel for the United States have never seemed to understand is that this is not a question of levying taxes on land owned by the United States. Counsel for the Government have contended, and still contend, that this assessment of benefits and damages was a lien only for the costs of construction of the drainage canal. We have pointed out that, under Section 34, Chapter 197, Laws of Mississippi 1912, (Pet. App. 35) the Drainage District is charged by law that it must repair, alter, enlarge, clean, protect and maintain the drainage ditch for the purpose of furnishing drainage to one-third of the land in this Drainage District, which land has not been taken by the United States.

On Page 5 of their Brief Counsel for the United States talk about levying an "additional tax." There is no additional tax levied. This is not a situation where all the Drainage District has to do is to request the County Board of Supervisors to levy taxes for maintenance. Under Chapter 197, Laws of Mississippi 1912, the only

way provided for the Drainage District to get money for anything connected with the drainage canal is by having the Board of Supervisors levy taxes on the unused assessed benefits which have already been fixed. The Drainage District has no other way to get any money. We cannot put here as an appendix all of Chapter 197, but a reading of that Chapter will show this Court that our statement is correct. If the lien of the assessed benefits should cease when the canal had been constructed, there would be no way on earth for the Drainage District to get any money with which to repair and maintain the drainage canal. This assessment is a special assessment and not a tax at all. The levying of a tax annually by the County Board of Supervisors is simply a ministerial act taken on request of the County Board of Drainage Commissioners. It may be that such unused assessed benefits will never be used as a basis of the levying of such taxes but it is the only basis upon which such taxes can be levied for the repair and maintenance of the drainage canal. Therefore, we respectfully submit that it is absurd to contend that the lien of the unused assessed benefits ceases when the construction of the canal has been paid for. If this were true, then the Drainage District would have no way in which it could get money to repair and maintain the drainage system.

As to the Drainage District having an "indefeasible estate" in this land, Counsel for the United States refer to the cases of the *United States* vs. *Aho*, 68 F.Supp. 358, (D. Ore.) and *United States* vs. *Florea*, 68 F.Supp. 367, (D. Ore.) and state that these decisions "have little applicability to the question here." This is some progress because the United States has been contending that such decisions have no applicability at all and Counsel for the

Government still do not show (and we say they cannot show) where these decisions cited are not exactly in point in this particular case. Otherwise, the law would just not make sense. These decisions are still here, have not been overruled, and have not been distinguished.

On pages 5 and 6 of the Brief of Counsel for the United States the statement is made that our contention that the correct measure of awarding compensation for the drainage canal and right-of-way was not used "is without merit" for the reason that the only evidence admitted by the District Court was a witness for the United States. This is not only an incorrect statement, but it completely evades the issue on this particular point. The contention of Petitioner on this particular point is that the District Court erred in refusing to admit the evidence which Petitioner wanted to offer to show the estimated cost of the repairs and maintenance to furnish proper drainage for the land in the District which land had not been taken by the United States, and to furnish proof by an expert engineer that such repairs and maintenance would become necessary and what the cost of them would be. Surely, as a matter of justice alone, Petitioner should have been allowed to offer this evidence and it should have been admitted and should have gone to the jury by reason of the authorities cited in our Petition.

CONCLUSION.

We respectfully submit that Counsel for the Government is very much in error in stating that there is no conflict in the issues.

1. What we are talking about in this case when we

refer to "unused assessed benefits" is an assessment roll which has been made final under the law and which has the force and effect of a judgment and which existed long before the United States took any part of the land in this Drainage District. If we are right about this, then the United States should pay either the unused assessed benefits on that part of the land in the District, about two-thirds, which has been taken by it, or it should be decreed that Petitioner should be able to levy taxes upon such unused assessed benefits, including the unused assessed benefits on land taken by the United States, when and if such should become necessary for the proper maintenance and repair of the drainage canal in order to furnish proper drainage for the one-third of the lands in the Drainage District not taken by the United States. If this is not true, then there is no way by which Petitioner can furnish such drainage because it cannot obtain any money otherwise.

2. Furthermore, Petitioner should certainly be allowed to prove that it will be necessary to repair and maintain that part of the drainage canal in the land not taken by the United States, what such cost will be, and this should be submitted to the jury. This is in line with all the authorities quoted in our Petition (Pet. 15-17, both inclusive).

Respectfully submitted,

JAMES STONE & SONS
P. O. Box 269
Oxford, Mississippi,
Attorneys for Petitioner.

CERTIFICATE

I, PHIL STONE, of Counsel for Petitioner, do hereby certify that I have this day sent by United States air mail, postage prepaid, to J. Lee Rankin, Solicitor-General of the United States Department of Justice, Washington 13, D. C.; to Perry W. Morton, Assistant Attorney-General, Department of Justice, Washington 13, D. C.; to Roger P. Marquis, and to Miss Elizabeth Dudley, Attorneys, Department of Justice, Washington 25, D. C., true and correct copies of the foregoing Brief.

WITNESS my signature at Oxford, Mississippi, this the_____day of_____, 1957.

Phil Stone
P. O. Box 269
Oxford, Mississippi
Of Counsel for Petitioner.